

Docket No. 5490

1. Opening of Meeting:

The Appeals Board convened at 10:30 p.m., January 8, 2008 in Sacramento, with Chair Rick Rice presiding.

2. Roll Call: Members

Present

Absent

Rick Rice, Chair

Fred Aguiar, Vice Chair

Ann Richardson

Terri Carbaugh

Liz Figueroa

Cindy Montañez

Stephen Egan

3. Approval of the Minutes:

The December 11, 2007 minutes were approved by all members except Member Montañez, who was not in attendance at the December Board meeting.

4. Chair's Report:

Chair Rice stated that the Governor was presenting the State of the State address that afternoon, and he encouraged everyone to listen.

Chair Rice reported that at the last board meeting there had been a vote to request an audit of some of the issues that were brought up during the course of an investigation for other purposes. He advised that he met with the Joint Legislative Audit Committee and they agreed to go forward with consideration of the request.. The Committee will notify the board when and if they proceed.

Member Figueroa commented that the Governor's address might hinder the money available for the audit. Chair Rice stated that we'll see.

Chair Rice stated that at a previous board meeting PALJ Hugh Harrison gave a report on case aging, and in August 2007 the Board was given a presentation by the Department of Labor (DOL) Regional Office on California's performance under DOL standards. Chair Rice then introduced Dale Ziegler, Deputy Administrator of the U.S. Department of Labor, Office of Workforce Security, who was present to report on their concerns regarding the Agency's performance under federal timeliness standards. Richard Triqq, DOL Regional Director, was also present.

Dale Ziegler presented the topic by means of a PowerPoint. (Attachment A)

Mr. Ziegler stated that California appeals constitute approximately 20% of total appeals nationally, and therefore DOL's interest in California's performance is high.

Member Egan questioned California's Lower Authority Appeals 45 Days time lapse performance, which Mr. Ziegler confirmed to be 13.6%.

Member Richardson asked for clarification regarding the California Average Age Proposed Core Measure chart.

Mr. Ziegler responded right now California timeliness over the last four years does not seem to be improving; the case aging seems to be increasing. He reported that his staff is looking at the numbers and cannot tell what the problem is. There is a data validation process used with the other states that California has not undergone.

Mr. Ziegler reported that from a National Office perspective, the message is they are concerned based on what they see in the numbers that they have, but are questioning whether the numbers are correct.

Member Figueroa asked if Mr. Ziegler stated that Feds are thinking of modifying California's Corrective Action Plan (CAP). Mr. Ziegler responded that was one suggestion being considered, and suggested that the Board and DOL work together on the matter.

Member Figueroa stated that it was her interpretation that the DOL had an agreement that CUIAB would measure its case aging differently. Mr. Ziegler stated that was true. For four years there has been a CAP in place stating that California would focus on case aging, median case aging. Looking at the data now something seemed wrong. As the Agency focused on case aging and on the older cases there should have been an improvement in timeliness, but that has not happened. He stated that from a National Office perspective it is important enough that they want to work together with CUIAB to figure this out.

Member Carbaugh asked Mr. Ziegler if he reported the backlog was 34,000. Mr. Ziegler responding that there is a pending caseload of 34,000. When he looks at the data, each falls into categories. How many are more than 90 days, how many are between 40 days and such. The National Office had been looking at that to try to model it out to understand what has been going on but were unable to get there. Mr. Ziegler stated that some of that may be because his staff does not have the key to the information that CUIAB has. He stated that they looked at one report and it showed two months that had identical data reported. When they looked at another one it just did not make any sense.

Member Carbaugh asked if the Agency possibly could be lagging at 11,000 cases for a month, that would then build upon itself. Mr. Ziegler concurred and stated that if unemployment goes up then they expect to see that increase.

In response to an inquiry Mr. Ziegler explained that NonMons are appeals with non-monetary issues that cause the appeal. The ratio between Appeals and NonMons should remain the same unless something happened. When DOL looked at the data that ration caught their attention.

Member Richardson asked about the length the process for the review of data and development of a modified correction action plan. Mr. Ziegler responded that if there are not any significant programming requirements or confidentiality questions about the data and its use, probably at least three months.

Member Carbaugh commented that they seem concerned about the quality of the data they are receiving. She asked if there was anything specifically that they would like to capture. Member Richardson followed up by asking if DOL is referring to the fact that they received identical data. Mr. Ziegler responded that would be one example and that there was another month where the data was clearly in question. Mr. Ziegler stated that the pending number was 2,500 when the month before it had been some 30,000.

Hugh Harrison responded to that specific point. He stated that the Agency does not have access to some systems, so CUIAB sends its data to EDD to input into their system. He recognized that the July and August data was messed up. The July data was inputted for August identical to July. He stated that his understanding was that EDD only reported one office instead of the 12 offices that do hearings. He commented that CUIAB has no control over the data EDD inputs. CUIAB is trying to work out other arrangements to allow some sort of validation. Currently CUIAB programming staff is locked out from software for data validation because CUIAB does not have access to Department systems. He stated that clearly one part of this is going to have to be working out those issues. In turns of the dubious data previously mentioned there is a definite input problem with the Department.

Chair Rice commented that it is CUIAB's data and it seem like we should have control over what goes to D.C. Mr. Harrison replied that it is his understanding from EDD and DOL is that they deal with one entity per state. He commented that California is segmented into two entities, but EDD does all the reporting.

Mr. Ziegler stated that is why EDD is included on the list of key staff to form a joint team. There are also questions about how long it takes a case to get from EDD to CUIAB. If the process is not swift, CUIAB cannot make 30 days. DOL, CUIAB, and EDD need to get together and identify the major issues and possible solutions.

Chair Rice commented that CUIAB would be very willing to participate.

Member Carbaugh commented that she feels the Agency has a straightforward measurement to ensure that claims are processed in a timely fashion, and she would be happy to have this Agency work with EDD and the Federal Government to get the Agency back on track.

Member Richardson commented that it is important to note that she has been on this Board since 2003 and this is the first she hearing that the Agency is so far off track. It may take a while for the Agency to figure out what happened.

Mr. Ziegler commented that the decision time lapse charts show time lapse at 5% within 30 days instead of 60% as of November.

Member Aguiar asked if those numbers were available in August.

Mr. Ziegler responded that what he saw in the minutes of the August board meeting was a reference to quality.

Member Aguiar questioned whether the numbers on decision time lapse and case aging were available in August.

Executive Director/Chief Administrative Law Judge Jay Arcellana responded that he did not recall if the presentation at the August meeting differentiated between time lapse and case aging. He stated that California engaged in the case aging process on the assumption that the DOL was going to move to a case aging concept. Case aging measures open cases and time lapse measures closed cases. With California if you meet 30 and/or 45 day cases what happens is the inventory is so large that the older cases are way out there which will negatively impact case aging because they are open. He stated that when the Agency embarked on the case aging plan there was an agreement with the DOL that we would move toward case aging and get the average case age down knowing that time lapse would suffer because you are measuring two different things. For the larger States the input was that case aging would be the better system because of that differential in terms of the huge cases. It has been just recently they heard that the DOL decided to do both, maintaining time lapse and the case aging concept.

Member Aguiar asked that in August was the Agency aware the numbers in terms of time lapse and case aging were this bad. Executive Director Arcellana responded that they were aware that the time lapse numbers were bad but that the case aging numbers from their perspective were good and that was the number they were going for.

Member Aguiar asked for clarification that in terms of timeliness the Agency knew in August that time lapse numbers were 5%, or what the Agency knew then and what they know now.

Executive Director Arcellana responded that they knew all along from the

beginning of the case aging pilot in 2004. He stated that the DOL approached California and stated that DOL wanted to engage in this case aging pilot. DOL informed California that it needs California to participate in this pilot. The Agency responded that if California does so then time lapse will suffer. In answer to Member Aguiar's question, yes the Agency knew that the time lapse numbers were always below standard and DOL was aware through the CAP, but that California was making tremendous strides in case aging because before engaging in the case aging concept, California and other large States had case ages that were 3 months. The goal was to balance the system, treat parties equally so that it would be a first-in first-out system, which would mean that parties would not have to wait because the State would not be gaming the system. He stated that any State can calendar to meet time lapse but that would be cheating the system from California's perspective because to do so any case older than 45 days is forgotten about because there is no reason to hear the case.

Chair Rice stated except that there is a public that needs it to be heard.

Member Richardson stated that the Agency is mandated by statute to do so.

Executive Director Arcellana agreed, and that is why the Agency is supportive of case aging. He stated that is why we do not game the time lapse system.

Mr. Ziegler stated that DOL understood that there would be a decrease in timeliness, but the timeliness started sloping in 2004 before the case aging issue. He stated that timeliness has remained flat for 4 years now and that is what the DOL is looking at. He stated that DOL intended to go to case aging and eliminate time lapse but now wonders if there is an unintended consequence that the DOL does not know about.

Executive Director Arcellana agreed and stated that the unintended consequence is from a State the size of California which cannot increase the caseload of the judges beyond a certain point because of labor relations contracts, and that other States do not have that problem. If the caseload spikes in smaller or medium size States with no collective bargaining contracts they can up the caseload.

Member Richardson commented that she has heard the concern is that if the case load goes very low, the Agency might end up doing lay offs at some point in time. She noted that the chart shows a straight across green line. She asked for information on the inventories.

Executive Director Arcellana responded that in terms of forecasting trends it is difficult to determine recessions. Part of the problem in terms of the system is that the Agency's trends are directly impacted by the EDD. If EDD goes through staff downsizing then their workload sits around and then when they pick it up it is transferred to CUIAB in large amounts. That results in the workload spiking and the inability of the Agency to make time lapse because when a State the size of California falls that far behind it takes a long time to turn it back around. He stated

that the options the Board could consider are many. The Board could consider from a policy perspective hiring many more judges and staff that would result in getting the work out quicker, but taking money away from facilities and maybe going to more telephone hearings.

Chair Rice inquired if the Agency had a surplus every year. Executive Director Arcellana responded that is correct, but it is difficult to predict when the Agency is going to have a surplus as it is unknown until the last quarter or month after.

Chair Rice asked how many years in a row has the Agency had a surplus. Executive Director Arcellana responded that the Agency has had a surplus for around five to seven years consecutively. The surplus is relative in terms of what it can buy because aside from the issues previously discussed the Agency will be caught in any caps on hire the Governor may bring up in the State of the State address. Even though we may have the money to spend on staff, if any Administration requires the Agency to hold staffing level at a certain level the Agency still could not hire.

Chair Rice commented that there is always a way to get some kind of exemption if there is a critical need.

Executive Director Arcellana agreed and stated that in the past the Agency has gotten around those exemptions. The problem with that process is that it normally takes a long time to get those exemptions. He explained that if you are a policy maker you don't want to say to 95% of State agencies that staff cannot be increased, and then allow the other 5% to do so. The Appeals Board is different from two perspectives: it is an entity that is purely driven by workload in terms of the budgetary impacts, and it is federally funded yet bound by the rules that apply to all generally-funded agencies. He states it is a complicated system and welcomes the opportunity to work with the DOL and EDD to work through some of the issues. He agreed that the Agency's numbers from the time lapse perspective presented by Mr. Ziegler are abysmal, but in reality the Agency knew it would happen.

Mr. Ziegler responded that was correct. They knew in the beginning it would happen but did not expect it long term. When DOL goes back and looks at the data at 2004 case aging was around 40 days. He stated that the average day of the 9055 report in December 2005 the case aging was 40 days and the median was 38 days. Assuming that November numbers are correct the DOL's data shows November 2007 with a 39 day average and a 37 day median. He stated that the point was, looking at the data right then, the DOL, EDD and CUIAB need to work together to take a look at it because if in fact the growth is there, and if the slope of the line is there, then some of the other data probably needs be reviewed. He stated that he did not look at what the Board's responsibilities were in trying to address the issues he just heard. But he stated he assumed there was some sort of communication system within the State that would advocate for certain things, and if it is a Federally-funded program and there is a freeze on he would hope that

the Agency would be trying to get the staff there and use the funds as appropriated.

Executive Director Arcellana responded that DOL required only that the case aging standard needed to met one month out of the year, in March, and CUIAB met that standard. He stated that the reason that was so is because the workload goes up and down from all the other months and the Agency can work the system and get those cases in and out the door so that on average when you get to March the Agency would be fine. He stated that currently the case age is high but the Agency is hiring judges, and increased the caseload to hopefully meet the required standard for the one month of March. The difficulty with California beyond that which was previously stated is that it is difficult to turn things around quickly.

Mr. Ziegler commented that DOL is perplexed and does not have an answer. He stated what the DOL has is a problem to present. The problem is important enough that DOL is prepared to dedicate some resources to work with the Regional Office to accomplish that. He stated he believed that they will be able to come up with the best solution to move forward.

Chair Rice stated that the DOL firmly has CUIAB's support.

Member Carbaugh stated for clarity there are two standards, case aging and time lapse. She stated that from CUIAB's standpoint the case aging may be more beneficial to the parties that are served because the Agency is not gaming the system and because the old cases do not remain and are moved out the door. She asked if Mr. Ziegler had any opinion which standard best serves the public in this State.

Mr. Ziegler replied his bias was case aging. He stated that if the 30 days standard is wrong then does the standard need to be raised. Is 40 a better number than 30. These are issues that will be looked at.

Executive Director Arcellana stated that for larger States 40 days is a more realistic standard. Mr. Ziegler replied that there are seven States who have an average age greater than 30, and there are other States making the standard.

Member Montañez commented for clarification, DOL wants to review California based on the case aging standard with the understanding that time lapse would suffer. California's numbers right now are 39 days and the goal is 30 days. When EDD, DOL and CUIAB get together the goal and focus will be on case aging. Member Montañez asked how many cases the judges receive by contract.

Executive Director Arcellana responded that the caseload was increased to 30 cases for the ALJ II and 27 for ALJs. Many offices are hearing more than the agreed-upon standard by holding mass calendars.

Member Montañez asked if CUIAB judges have all been at that caseload

consistently for all the last couple years or from 2004 since the CUIAB Correction Action Plan. Executive Director Arcellana responded that they have not. The judges' caseload fluctuates up and down.

Member Montañez inquired how CUIAB's judges caseload compare with judges from other States. Mr. Ziegler answered he did not know.

Mr. Ziegler stated another problem is defining appeals, that is are there appeals in that 250,000 that should not be there or that could be handled in a totally different way. Some States do reconsiderations and re-determinations. When DOL looked at the data, 79% of appeals were classified as "other".

Member Aguiar asked if the information CIUAB provided to EDD was different than that provided to DOL, and when did CUIAB become aware of this discrepancy. He questioned if this happened only one time.

Hugh Harrison responded that when the Agency was clearing up the error in the first Regional report CUIAB received the November report with the mix-up in that report. He stated that those were the only two that he was aware of.

Member Aguiar asked what Corrective Action did the CUIAB request EDD to take so EDD does not do that again. Mr. Harrison responded that at this point the Agency is trying to get EDD to correct data to DOL and have not gotten to the second step of how to prevent it in the future. He stated the Agency is still trying to figure out what happened and EDD has not yet submitted a report outlining what happened.

Mr. Aguiar questioned if the Agency was at its maximum caseload based on the backlog why the Agency would reduce that caseload even when caseloads were going down and not keep the caseload at maximum to push the numbers up.

Executive Director Arcellana responded that part of the rationale is connected to the support staff. He explained that the Agency could have the judges hammering out a zillion cases but if the support staff is not there to calendar, prepare, type and whatever else then to do so would be counter productive.

Member Aguiar asked if it wouldn't be better to hire the additional support staff to keep caseloads at a higher level to deal with the backlog and untimeliness.

Executive Director Arcellana agreed but stated that the Agency chose during that time period to increase the page count typist to increase the production. He stated that they did not want to cure the problem by simply hiring which may have put the Agency in an overstaffing situation, and instead they chose to increase the page count standard of the typists and increase the various standards with verification and calendaring. He stated they first chose to increase production level given the complimentary change with technology. Once that is sorted out then a better analysis in terms of the appropriate staffing levels can be done. In addition, the

Agency uses Retirees ALJs almost on a regular fulltime basis and the ideal circumstance would be to use them only when needed. The problem with that is when the DOL pulls a random number of cases for quality review the retirees flunk quality review and then the Agency has a problem with quality review. He stated that up until a month ago the Agency was geared based upon the program received from Cheryl that the Agency was going to a case age concept. Now if the Agency is not going to go to a case age concept that will dramatically alter how the operation is managed. He stated that if now the Agency goes to a combination time lapse and case aging, then the Agency would probably increase the case load and hire more ALJs. Then the Agency would probably make recommendation to go back to the union and renegotiate the caps on case load as this is a whole different method of operation.

Member Montañez stated she understood the DOL wants the Agency to focus on case aging. Mr. Ziegler stated that the DOL has not made a decision that the Agency is not going towards case aging concept. He reiterated that the data presented raised a question for the DOL that is there an unintended consequence here and with California being 20% of the system DOL wants to determine if there a problem.

Executive Director Arcellana responded to the question about the jump in the NonMon appeals that as the Agency tracked the numbers it noticed a big jump in the NonMon appeal rate when EDD went to Call Centers. He stated EDD used to make the determinations in-person and EDD consolidated and now the determinations by telephone. The EDD has a three-call process, meaning that if a claimant was not reached after three attempts the EDD would issue a determination without any input from the claimant. The CUIAB's data shows that when EDD went to the Call Centers process the NonMon appeal rate spiked up. He stated that part of the unintended consequences is that what EDD does impacts what CUIAB does. He stated that the CUIAB is supposed to be independent from EDD and you don't want a party saying, am I just going through another EDD determination process by going to a hearing. He stated that CUIAB does want to be separate from EDD and that presents the confidentiality of information issue that EDD wants to protect as does CUIAB.

Member Montañez stated that she agreed with the concept of getting the CUIAB, EDD and the DOL together to ultimately address the issues. She stated that the bottom line is that the CUIAB is trying to help employers and claimants get a determination.

Member Aguiar inquired that as CUIAB has been working with DOL since 2005 and at the end of the presentation it is recommended that EDD, DOL and CUIAB get together, what is the Agency going to be doing differently now than it has since 2005.

Mr. Ziegler responded that the National Office would become more involved and not rely as heavily on the Regional Office as it has in the past. He stated also that

EDD will be involved.

Member Aguiar inquired as to why EDD had not been more involved before this.

Executive Director Arcellana responded that EDD is a large department with a myriad of programs to administer, not just UI. From EDD's perspective, if it takes a few more days to get the work to CUIAB it is not EDD's problem. He stated that CUIAB has quarterly meetings with EDD and has made great strides over the years. The problem is that depending upon what EDD's priorities and needs are things might get put off, for example, Paid Family Medical Leave. The Agency sensed that part of the problem of the workload not materializing was the EDD's inability to properly advertise that program. CUIAB is single-functional, all it does is appeals, whereas EDD is multi-functional. If EDD has to go through downsizing, CUIAB does not know where the downsizing may occur but all of a sudden one office may have no work and two months later the office is flooded with work.

Member Richardson stated it is clear that the CUIAB needs some method of communication with EDD so that when appeals are not getting processed in a timely fashion the CUIAB can communicate with EDD without breaching any confidentiality.

Member Carbaugh stated she welcomes the working group and it is her hope that it does not become just another working group but that it does turn the situation around. California is a vast State with vast recourses. She stated she agrees with Chair Rice that where there is a need, a will, CUIAB can find a way.

Mr. Ziegler responded that from previous experience it takes time to turn a State the size of California around.

Chair Rice introduced and welcomed Sarah Huckle, from the Senate Office of Research, Jaime Fall, Deputy Secretary, Employment and Workforce Development, and Paul Theist, Assistant Communications Secretary, both with the Labor and Workforce Development Agency, all of whom are present in the audience.

5. Board Member Reports:

There were no Board Member reports.

6. Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that training will begin next week for ALJ hires, two from San Diego and one from Oxnard. The second session will begin on February 11 for two additional ALJ hires, one from Oxnard and one from Los Angeles.

Executive Director Arcellana commended the staff at Venture Oaks, and especially

the Sacramento Office of Appeals who worked through the power outage. He reported that when the power went out the ALJs for Sacramento Office of Appeals used flashlights to show parties in and around. One ALJ used a cell phone to conduct a telephone hearing and the ALJs used old tape machines with batteries to record testimony.

Executive Director Arcellana reported that he, along with Tim McArdle, spoke at the California Unemployment Insurance Council luncheon in Long Beach last month.

7. Branch Reports:

a. Executive Director/Chief Administrative Law Judge Jay Arcellana reported that because of the power outage he did not have complete numbers and not of all the reports were in yet. However, he could report that for the UI Program December, Field Operations verified 19,974 cases and disposed of 19,727 cases, for the DI Program FO verified 1,347 cases and disposed of 1,179 cases, and for the Tax Program FO verified 289 cases and disposed of 91 cases.

Member Richardson asked if the new ALJ hires were to replace the retirees or would actually increase CUIAB's staff of ALJs, and if so, to what number. Executive Director Arcellana replied the net would be an increase but he was uncertain how much, and would have that information at the next Board meeting. Member Richardson asked if CUIAB is hiring ALJs as a result of the workload increase. Executive Director Arcellana responded that it is a combination of the workload increase and attrition.

b. Jehan Flagg, Special Assistant, Communications and Internal Affairs reported, with regard to the issue of getting CUIAB on the Statewide Global Email Address System to provide access beyond just employees within CUIAB, that they will be meeting with Dale Jablonsky, Acting Chief Information Officer for the Labor and Workforce Development Agency, Pam Boston, and Rafael Placencia on January 9. We hope to move forward, find out first hand if it is doable, and if so what CUIAB will need to do from an infrastructure perspective to make that happen. Special Assistant Flagg stated she will report on the progress of this project in February.

Special Assistant Flagg reported on the new Communications and Legislative Policy provided in the Board packets to replace current existing Policy No. 3. Hopefully the Board Members will vote on the new policy at the next Board meeting.

c. Deputy Chief ALJ, Appellate Operations Steve Angelides reported that December was the fourth average workload month in a row in AO. In December AO registered 1244 cases, 100% of its calendar year average, and disposed of 1192 cases, 98% of its calendar year average, leaving a balance of open cases at 1602, 87% of the calendar year average. AO average UI case age at the end of December stood right at the U.S. Department of Labor standard for higher

authority, 40 days. AO transcript production recovered from its plunge in November and returned to average in December at 5,838 pages, 100% of the calendar year average.

Deputy Chief ALJ Angelides reported that AO filled the three vacancies in the registration staff, with the promotions of Dan Lorenzo and Kimberly Bernhardt from AO, and Sherry Hooper from the Sacramento Office of Appeals, to Management Services Technicians. AO is currently advertising for two Permanent Intermittent Bilingual Office Assistants or Office Technicians to fill behind Kim and Dan.

Deputy Chief ALJ Angelides reported that AO is continuing to work on a number of special projects, including revising the acknowledgment and written argument forms, the potential precedent on subject matter jurisdiction, the proposal for AO quality review, revising the decision forms and paragraphs, and the appellate procedure manuals. The hearing transcribers, under the guidance of LSS II Brenda Payne, are also finishing up the proofreading of the final batch of precedent decisions which will be added to the Decision Tools.

Deputy Chief ALJ Angelides demonstrated the Decision Tools program to the Board. Mary Mitchell from IT and ALJ Catherine Leslie from the Los Angeles Office of Appeals were commended for their outstanding achievement on creating the Decision Tools. Decision Tools is a collection of decision resources that will be available on employees' computers. Deputy Chief ALJ Angelides demonstrated how to navigate through the Decision Tools program and how the Decision Tools are used by both ALJs and typists in writing decisions. Deputy Chief ALJ Angelides stated that the Decision Tools program is self contained with an instruction video on how to use the program, and is continually updated.

d. Deputy Director, Administrative Services Branch, Pam Boston reported that the Personnel Office has scheduled the three-hour SSA Transfer Exam in various Field Offices for Saturday, January 12. There are 71 individuals taking the exam. Deputy Director Boston stated that the exam will give individuals the eligibility to laterally transfer to the analyst classification.

Deputy Director Boston reported on the power outage that occurred on Friday, January 4. The power went out at approximately 9:10 a.m. All headquarters infrastructure hardware immediately converted to the battery backup power, which allows the Agency to continue for about 30 minutes. At 9:17 a.m., IT sent a global message out to all employees informing them of the Venture Oaks building power outage. At approximately 9:30 a.m., IT started shutting down the system. At approximately 6:00 p.m. Friday night, Josh Perkins, returned to headquarters to begin restoring some of the systems. On Saturday morning, Abigail Perry, Anita Christian and Josh Perkins came into the office to restore other systems. The majority of the computer systems were back online by approximately 6:00 p.m. on Saturday. As of 7:30 a.m., Monday morning the majority of the computer systems and servers were back online. Deputy Director Boston also reported that the headquarters security system also converted to battery backup, which maintains

the system for about 4 hours. There are several Field Offices that are also on that system, so the Field Representatives contacted the offices to let them know what they needed to do in the event the system did not come back up. At about 1:30 p.m., staff implemented the contingency plan by manually locking the security doors. Security monitor, Ana Ibarra, and Facility Manager, Rita Thompson, stayed until all employees were safely out of the building. Deputy Director Boston commended both the Business Services staff and the IT staff for dealing with the power outage situation.

Chair Rice agreed and expressed his appreciation.

Chair Rice inquired if the SSA exams were open or promotional exams. Deputy Director Boston replied that the exams are for the CUIAB employees who are in a classification that can laterally transfer to SSA.

d. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported on the following P&PM Branch items:

Information Security Officer Ryan Howland released a memo to all CUIAB employees in December regarding the annual Information Security Training on-line course. The study guide and quiz were created by Ryan Howland and Nancy Pacheco. The completion deadline is January 25th which should provide employees ample time to read the study materials and take the "open book" quiz.

Budget Officer Renee Erwin will be releasing the Personnel Call Letter packages and the Operating Expenses & Equipment Call Letter packages to the CUIAB branches on January 22nd. A budget call letter workshop will be scheduled toward the end of January to provide training on the call letter process to any manager or supervisor who is interested. March 14th is the final submission date for all call letters.

Under the coordination of Staff Manager Martha Diaz of the PPM Branch and LSS II Marsha Millet of the Regional Support Unit, a total of 64 typists and supervisors received training from September 20, 2007 to November 14, 2007. The survey results were very positive with many of the typists rating the training as excellent or great.

Mary Walton-Simons reported to the board about the passing of Jack Bright in December. He was the UI Appeals Program Specialist contact person in Washington D.C. for all states and had a good working relationship with California. California was the first state he contacted when he brought six states together to pilot the Case Aging Measurement. He also coordinated the project entitled "UI Appeals Successful Practices" in which California participated with fifteen other states.

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported that the Appeals Board currently has 165 court cases in litigation. In December four new cases were received, and four were closed, all of which affirmed the Board decisions.

Chief Counsel Hilton reported that the Board's workload averaged 12 cases per day for each Board Member.

9. Unfinished & New Business:

Chair Rice asked if the Board would put over for one month the vote on the new Communications Policy.

Member Carbaugh stated it was a good policy and that Ms. Flagg had worked with people throughout the entire Agency statewide to ensure a high comfort level with what the Board is trying to accomplish with a communications policy. Member Carbaugh stated she would probably strike the last sentence in the proposed policy.

Member Carbaugh stated that it is important for the record that people understand that the goal of the policy is to facilitate information to the media, the Legislature, to the Governor's Office and to the general public, and to ensure that information is consistent and accurate.

Special Assistant Flagg stated that the proposed policy had been modified from the previous version based on feedback received from some of the staff and that the proposed policy is comprehensive and very reflective of everything collected over the last three months.

Chair Rice asked, with reference to the DOL presentation, how we could be at 39 days under the case aging measure, when under the time lapse measure we've decided only 5% of cases within 30 days and 13.6% within 45 days.

Mr. Hugh Harrison responded that part of the confusion is created by the fact that when the report for average case aging was developed one of the other reports was not changed. He stated that when 1/3 of the case load is less than 30 days old and 1/3 of the case load is between 25 – 40 days old, and the third that is over 45 tends toward the younger age in that cluster, that is why only 13% went out in 45 days and the average age is 39 days. He stated that with time lapse a case decided on the 45th day and the 46th day are completely different. It is a drop dead cut off. That is why there are problems with it because it distorts the figures and requires cases to be juggled in order to meet that cut-off.

Member Carbaugh stated that it was discussed at a prior board meeting to create another working group to evaluate the consumers of the end product of the

Agency. She stated that someone was putting together a strategy for doing that and possibly the Board could revisit that at a later board meeting

Member Richardson stated that a Customer Service Survey has been conducted and the Agency scored very high. Deputy Director Walton-Simmons stated that the survey was in 2005.

Member Richardson commented that Deputy Director Walton-Simmons worked diligently on the 2005 Customer Survey Report and that it was very well done. There has also been discussion about possibly doing an employee survey.

Chair Rice reported that PALJ Tim McArdle compiled suggestions on the Appeals Board Policy No. 19, relating to delegated authority, and that information would be emailed to the Board Members for discussion at the next board meeting.

Chair Rice also reported that issues of nepotism and youth aide/student assistant hires were raised in a report by Investigator Tim Yeung, and suggested that the Board consider adopting policies to address the concerns raised by the investigator.

Member Carbaugh asked if the Agency had an existing Diversity Policy. Chair Rice responded that he did not think so.

Member Richardson asked how the current Student Assistants with CUIAB learned of the jobs and how the Agency obtains its Student Assistants and Youth Aides. She stated that the issue is not only recruitment but also retention and the ability to let them go if necessary.

Chair Rice stated CalTrans has a part of their website devoted to the Student Assistant Program. Chair Rice suggested utilizing the Labor Agency for assistance. Mr. Jaime Fall stated that the Labor Agency did have many one stop career centers around the State, all with registered youth programs.

Special Assistant Flagg volunteered to work on the program also from an outreach perspective.

Chair Rice commented that the Agency's current nepotism policy is woefully inadequate, and that we need a broader policy which considers employee morale, such as the County of Santa Barbara policy.

Chief Executive Director Arcellana agreed to work with Ralph Hilton from a legal perspective and also obtain input from Senior Staff and the local managers statewide.

Member Carbaugh stated that active recruitment for employees, including Student Assistants, is imperative. The Agency must have diversity. If the Agency is narrowing the field it cannot do the best job.

Member Richardson agreed, stating that the staff at CUIAB should be as diverse as the public they serve.

10. Public Comment:

Cindi Rosse, PALJ from the San Jose Office of Appeals, stated upon reading the Agenda, there were so many changes happening that she wanted to hear first hand what was happening at the Board. She expressed her privilege to work at CUIAB for the past 18 years, and her concern with some of the changes, feeling as if it was like "throwing the baby out with the bathwater." PALJ Rosse urged that we not lose sight of all of the fantastic things that the Agency does. We have worked together as a family, and in the end the Agency must stand together and continue to look at the mission and the importance of the public that the CUIAB serves. In every office there are one or two disgruntled employees, but the majority of the employees consider it a privilege to come to work here everyday. The PALJs are supportive of Executive Director Arcellana and his accomplishments. She stated she is proud of what is done here and proud of the support received from Executive Director Arcellana and the Board and its accomplishments. PALJ Rosse stated she agreed that there should be some method to track the complaints that come in but suggested that we also track the thank you letters. PALJ Rosse agreed that some things could be done better and expressed openness to change. She acknowledged a spirit of cooperation from the ALJs and staff in the Field, and thanked the board for the opportunity to address it.

ALJ Carrillo addressed the Board, with remarks that echoed those of PALJ Rosse. Unfortunately the recorder failed to pick up ALJ Carrillo's remarks, so the details of those remarks cannot be reported.

11. Closed Session:

The Board went into closed session. No votes were reported from closed session.

Adjournment

California Unemployment Insurance Appeals Performance

Dale Ziegler
Deputy Administrator
U.S. Department of Labor
Office of Workforce Security
January 8, 2008



Basis for the Federal Role – State UI Appeals



Section 303 [42 U.S.C. 503]

(a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act (FUTA) includes provision for:

- (1) Such methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and...
- (3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and...
- (6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports;.....

UI Performs: CAPS In Action Project

- July 2007 , initiated project to improve performance in areas that have continually been problematic.
- 5-Year history of low performance
- California selected in
 - First payment timeliness
 - Lower Authority Appeals Time Lapse

Appeals Performance Monitoring

Three measurement areas – Each measuring a distinct program requirement

- Quality – “Opportunity to be heard”
- Decision Time Lapse – “Payment when due”
- Average Age of Pending Cases – “Methods of administration”

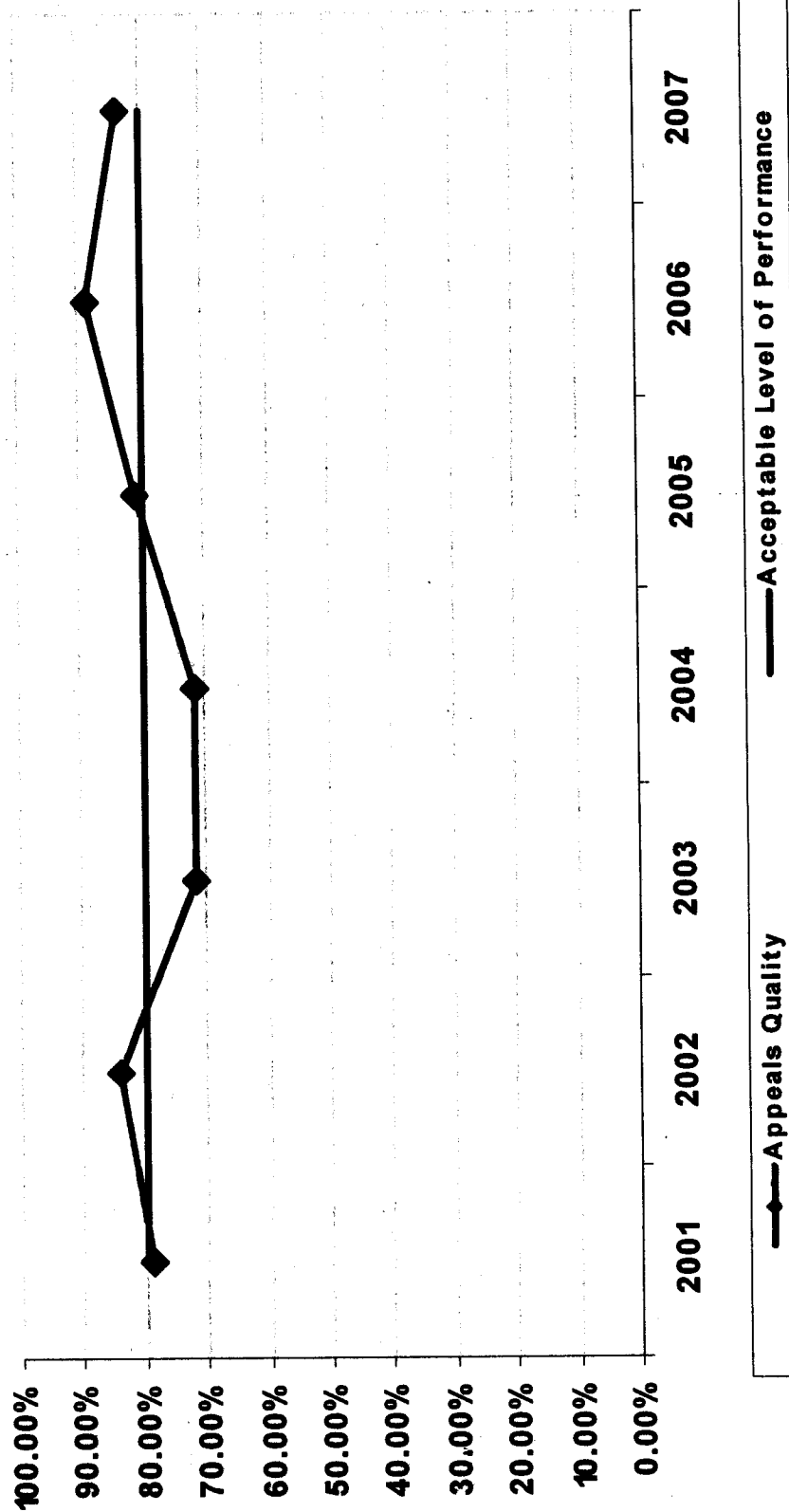
UI Appeal Performance Measurement

- Quality
 - 80% of cases scoring 85 pts. or more
- Decision Time Lapse
 - 60% of cases disposed within 30 days
 - 80% of cases disposed within 45 days
- Case Pending Time Lapse
 - Average age of pending appeals within 30 days

California Current Performance

- Quality
 - 90% of cases scoring ≥ 85 (standard 85%)

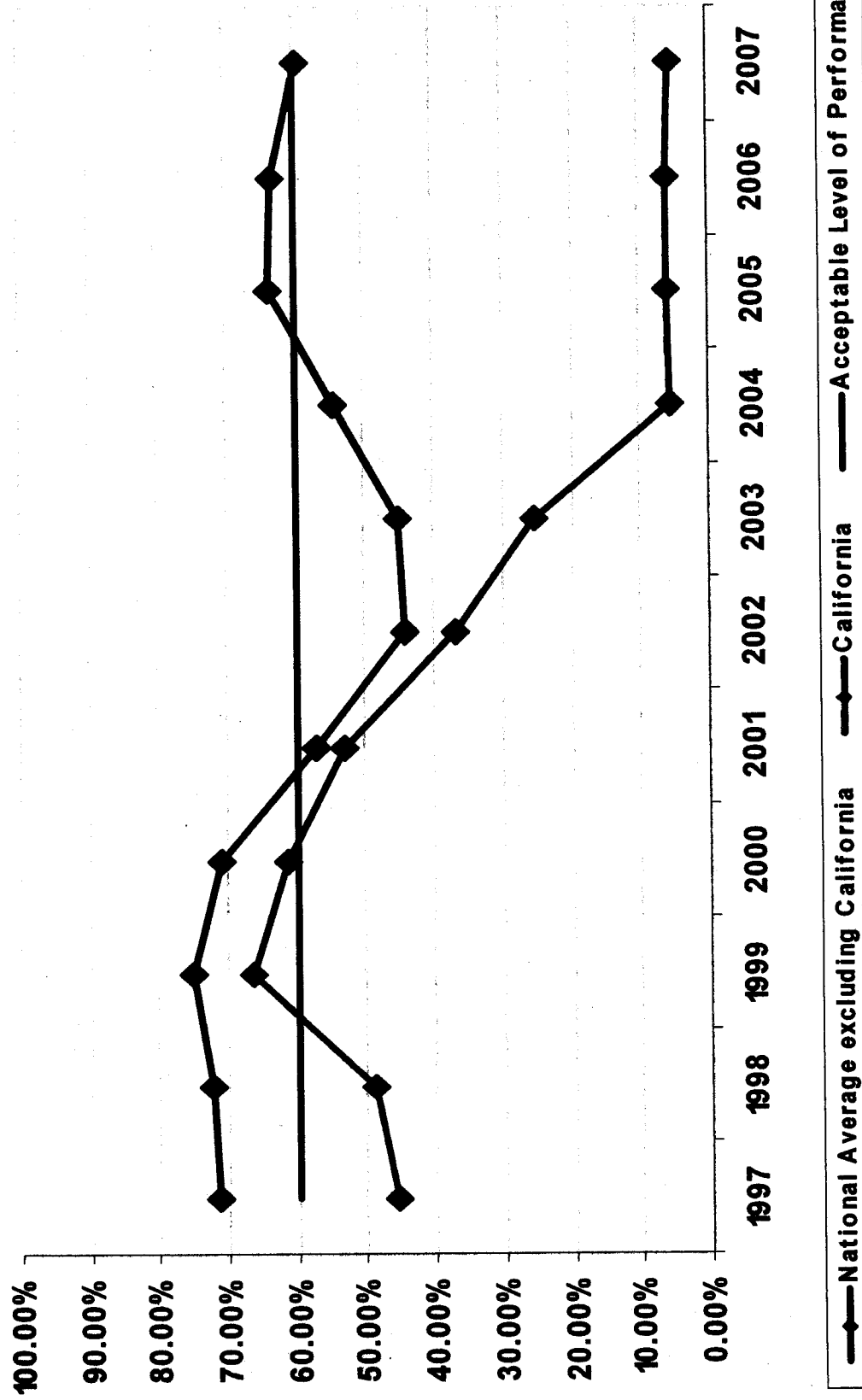
**California
2001 - 2007
Lower Authority Appeals Quality
Core Measure**



California Current Performance

- Quality
 - 90% of cases scoring ≥ 85 (standard 85%)
- Decision Time Lapse
 - 5.0 % within 30 days (standard 60%)

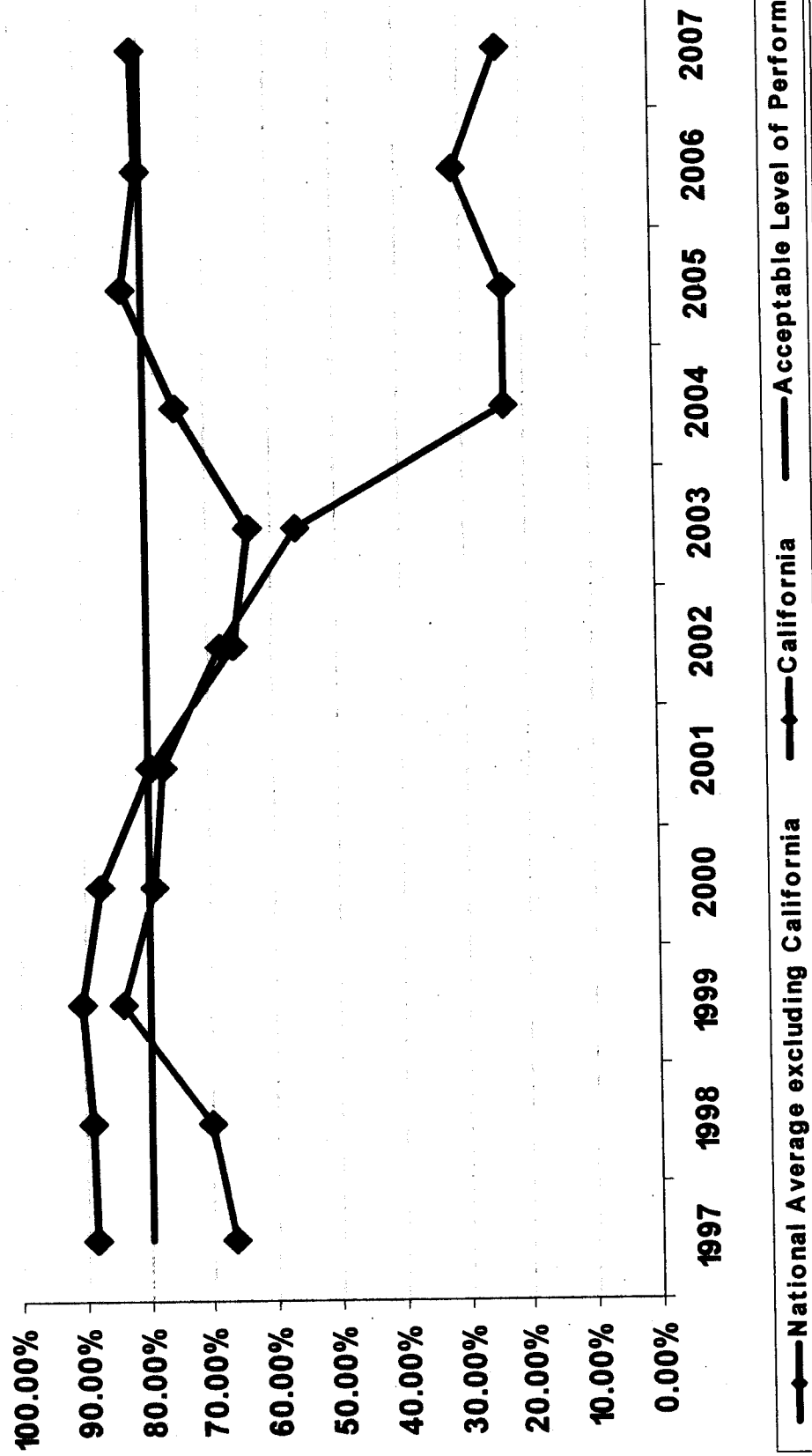
1997- 2007 Lower Authority Appeals 30 Days Secretary's Standard



California Current Performance

- Quality
 - 90% of cases scoring ≥ 85 (standard 85%)
- Decision Time Lapse
 - 5.0 % within 30 days (standard 60%)
 - 13.6% within 45 days (standard 80%)

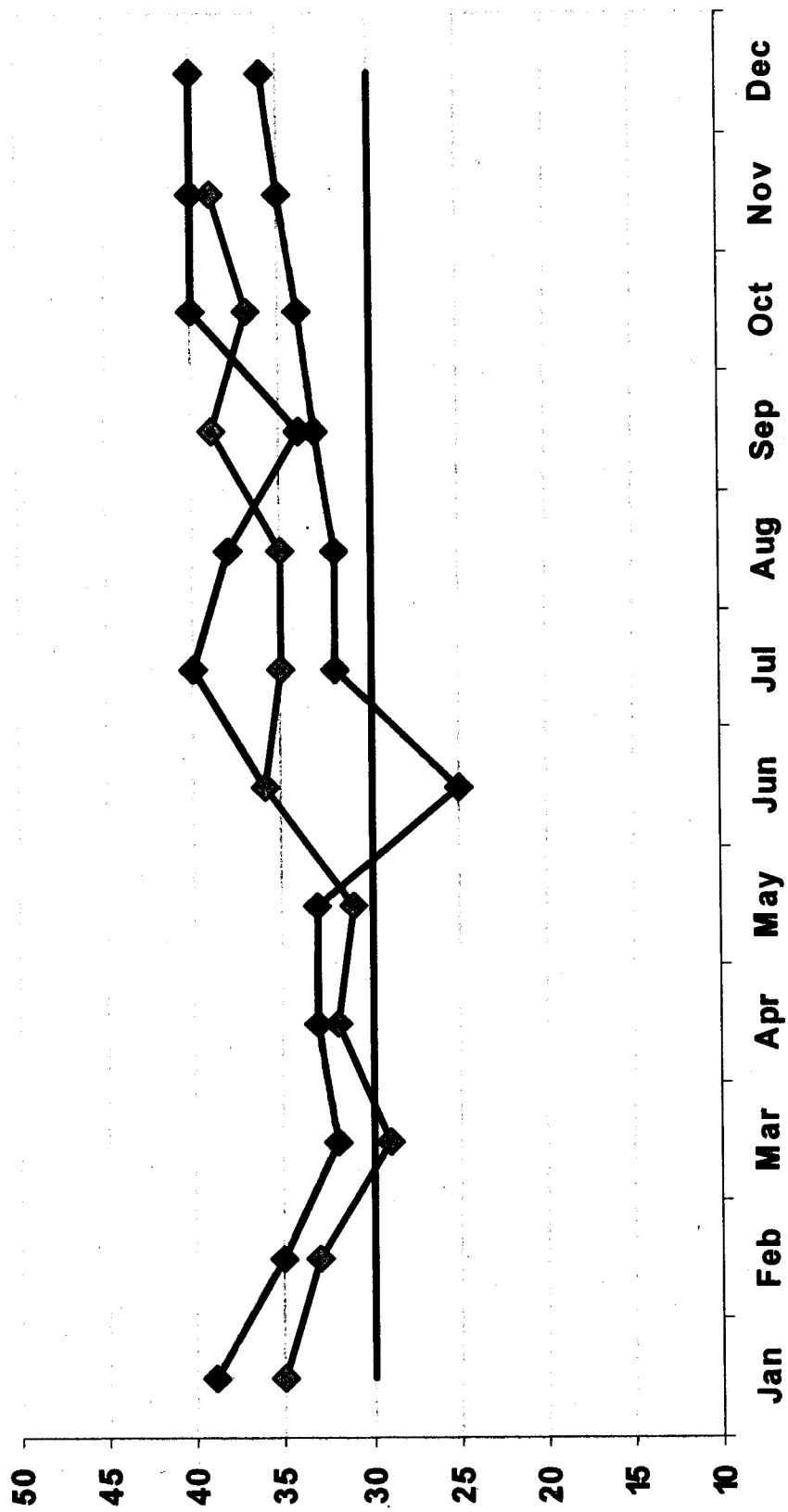
1997 - 2007 Lower Authority Appeals 45 Days Secretary's Standard



California Current Performance

- Quality
 - 90% of cases scoring ≥ 85 (standard 85%)
- Decision Time Lapse
 - 5.0 % within 30 days (standard 60%)
 - 13.6% within 45 days (standard 80%)
- Pending Case Aging
 - 39 days (standard 30 days)

2005 - 2007 California Average Age Proposed Core Measure



2005
 2006
 2007
 Recommended Acceptable Level of Performance

California's FY 2008 Plan

- “There were no factors unique to either requirement that prevented compliance.”
- “There is no expectation that the acceptable levels of achievement will be met in the next two years.”
- “As a result, California is requesting a multi-year CAP [*Corrective Action Plan*] for this requirement.”

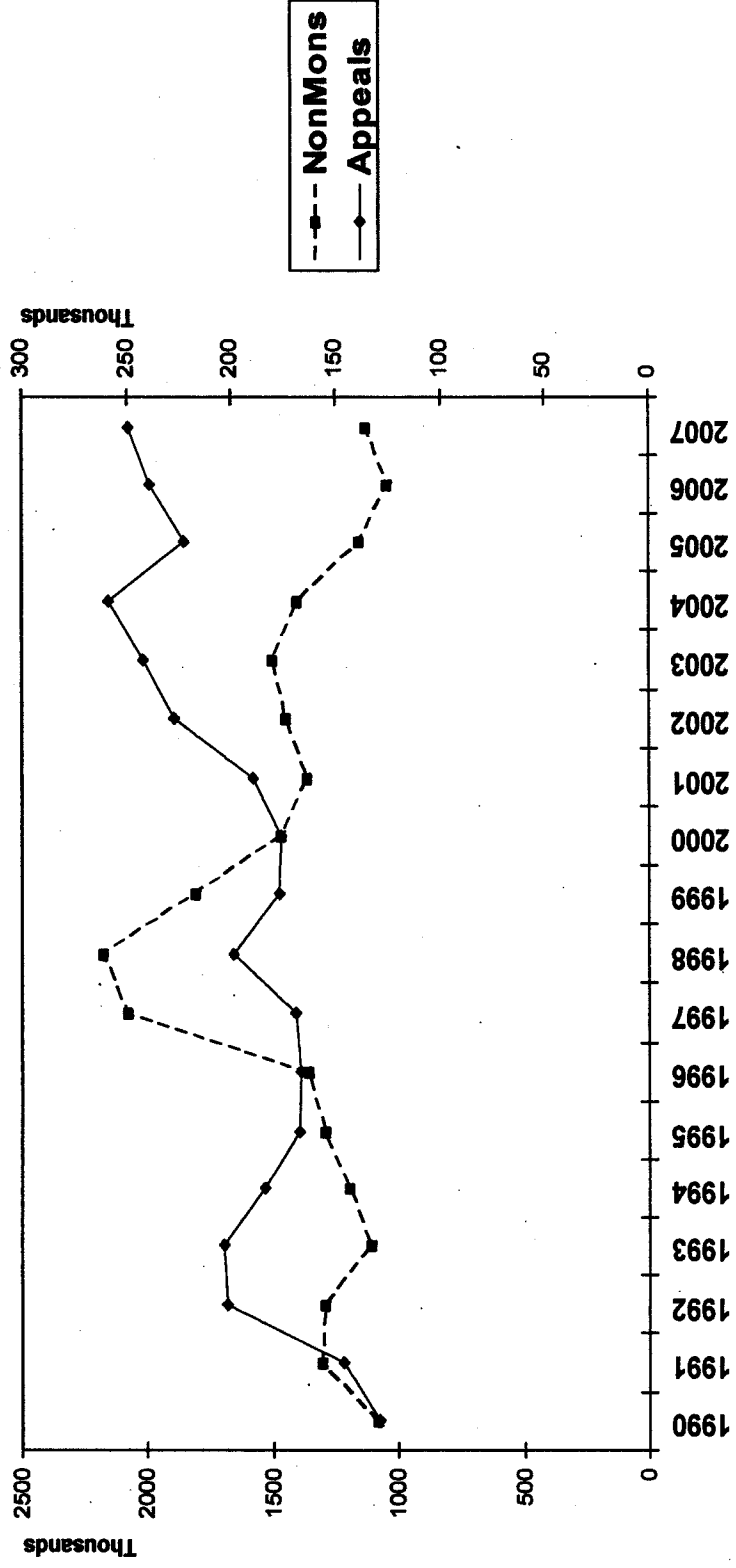
California's Corrective Action Plan

California will continue to concentrate on the average and median case aging. Absence a major recession, California should show improvement on the time lapse standards.

Specific steps include:

- technological enhancements for calendaring of hearings, and
- tracking decisions.

Appeals & NonMons (1990-2007)



Summary

- Clearly Not Meeting Federal Requirements
- Current Correction Plan does not appear to be successfully addressing performance
- DOL Perplexed by Data

Next Steps

- Assign Key staff from the CUIAB, EDD and DOL Regional and National Offices to form a joint team to:
 - Review Data
 - Recommend Modified Corrective Action Plan